

## **DETAILED ACTION**

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Fredrick Zimmerman on 9/10/2009.

The application has been amended as follows:

Claim 1, line 3, after "metalloid oxides;", add "wherein said particles comprise more than one atom per particle"

Claim 23, line 2, after "free of oxygen;", add "wherein said particles comprise more than one atom per particle".

Claim 36, line 2, after "free of oxygen;", add "wherein said particles comprise more than one atom per particle".

### **Election/Restriction**

The species election requirement has been withdrawn as the base independent/generic claims have been found allowable, all claims withdrawn due to the species election requirement have been rejoined.

Claims 1-53 are directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(B), claims 54-62, directed to the process of making or using an allowable product, previously withdrawn from consideration as a result of a restriction requirement, claims 54-62 are hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Because all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, **the restriction requirement as set forth in the Office action mailed on 3/8/2007 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

### ***Allowable Subject Matter***

Claims 1-62 are allowed.

The following is an examiner's statement of reasons for allowance: The amendments to the claims overcome the prior art rejections. None of the prior art fairly teaches or suggest applicants invention with the requirement that the metal particles comprise more than one atom per particle. Further, the examiner can find no teaching

Art Unit: 1793

or suggestion in the prior art or in the knowledge generally available to one of ordinary skill in the art, that could be used by one of ordinary skill in the art to arrive at applicants claimed invention from the known prior art that teaches the use of singular metal atoms in the particles.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES E. MCDONOUGH whose telephone number is (571)272-6398. The examiner can normally be reached on 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on (571)272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1793

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J.A. LORENZO/  
Supervisory Patent Examiner, Art Unit 1793

JEM 9/13/2009